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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

KATHRYN ACOSTA,	)	Case No.
Plaintiff,	)	
vs.	)	<b><u>PLAINTIFF KATHRYN ACOSTA'S</u></b>
AGELESS MEN'S HEALTH, a foreign	)	<b><u>COMPLAINT FOR UNLAWFUL</u></b>
limited-liability company,	)	<b><u>DISCRIMINATION AND RETALIATION</u></b>
Defendants.	)	<b>[Demand for Jury]</b>

Plaintiff KATHRYN ACOSTA, an individual, hereby alleges and complains against the Defendant as follows:

**Jurisdiction and Venue**

1. This is a civil action for damages brought by KATHRYN ACOSTA against her former employer to redress sex discrimination and retaliation under state and federal anti-discrimination statutes, N.R.S. 613.330 *et seq* and Title VII of the 1964 Civil Rights Act, as amended by the 1991 Civil Rights Act, 42 U.S.C. § 2000e. The aforementioned 1991 Civil Rights Act grants plaintiffs the right to a jury trial.

2. On January 9, 2011, KATHRYN ACOSTA (then Kathryn Lynn) submitted

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1 intake forms and information to the U.S. Equal Employment Opportunities Commission  
2 (hereinafter "EEOC"). On January 13, 2011, KATHRYN ACOSTA signed the formal "Charge  
3 of Discrimination" prepared by the EEOC, attached as **Exhibit 1**, with Defendant AGELESS  
4 MEN'S HEALTH named as her employer.

5 3. Thereafter, KATHRYN ACOSTA submitted additional information and forms to  
6 the EEOC about additional illegal employment practices to which she was subjected. On June 25,  
7 2012, KATHRYN ACOSTA signed a second "Charge of Discrimination" prepared by the EEOC,  
8 which is attached as **Exhibit 2**.

9 4. On January 12, 2013, KATHRYN ACOSTA received two EEOC "Notice of  
10 Rights" letters, one for each charge she filed. She is filing this suit within the requisite 90 days  
11 of her receipt of that Notice. Thus KATHRYN ACOSTA has fully complied with all  
12 prerequisites under Title VII and Nevada state statutes to pursue these claims in this Court.

13 5. The unlawful employment practices Plaintiff KATHRYN ACOSTA is  
14 complaining of occurred within this District (within the state of Nevada), thus venue is proper in  
15 this District pursuant to §706(f)(3) of Title VII, 42 U.S.C. § 2000e-5(f)(3).

16 **Parties**

17 6. Plaintiff KATHRYN ACOSTA is a female resident of Nevada and was  
18 employed by Defendant AGELESS MEN'S HEALTH at its Henderson, Nevada location.

19 7. Defendant AGELESS MEN'S HEALTH, a foreign company authorized to do  
20 business in Nevada, did so at all times relevant to this Complaint, including the employment of  
21 the Plaintiff KATHRYN ACOSTA and many others, both here in Nevada and four or five other  
22 states. This makes Defendant AGELESS MEN'S HEALTH an employer to be subject to Title  
23 VII and N.R.S. 613.330 *et seq.*

24 8. Upon information and belief, Jason Blackwood is the founder, owner and chief  
25 operating officer of Defendant AGELESS MEN'S HEALTH which has its principal place and  
26 headquarters in Tennessee. Jason Blackwood is believed to work out of the Tennessee  
27 Headquarters that he controls, makes or has approval authority over all decisions about the

1 operation of the company, its expansion and business practices including the structure of the  
2 company and its clinics, and that he oversees, controls or approves all hiring, promotions or  
3 advancements, and compensation of personnel.

4 **General Allegations**

5 9. Plaintiff KATHRYN ACOSTA earned her B.S. (undergraduate degree) in 2008  
6 in Health Care Administration and her MBA from the University of Phoenix in 2011, with a  
7 focus in Health Care Management.

8 10. Plaintiff KATHRYN ACOSTA was contacted interviewed and hired by  
9 Defendant AGELESS MEN'S HEALTH in April, 2009 to be its Nevada Business Manager at  
10 the business location at 2821 West Horizon Ridge, Suite 111, Henderson, Nevada.

11 11. Plaintiff KATHRYN ACOSTA was led to believe Jason Blackwood was the  
12 founder and owner of the company and that she would report to him (and to the CFO) for  
13 business issues and her work.

14 12. Plaintiff KATHRYN ACOSTA was told that Defendant AGELESS MEN'S  
15 HEALTH was expanding its business, a series of successful medical clinics providing  
16 testosterone replacement therapy to male patients, in Nevada and a number of other states. At the  
17 time of her hire, Plaintiff KATHRYN ACOSTA believes Defendant AGELESS MEN'S  
18 HEALTH was operating four clinics in three states.

19 13. According to its current website (2013), Defendant AGELESS MEN'S  
20 HEALTH currently operates twenty clinics in nine states: Arizona, Colorado, Mississippi, New  
21 York, Texas, California, Georgia, Nevada, and Tennessee.

22 14. At a business dinner in July, 2009 in Las Vegas, NV, Defendant AGELESS  
23 MEN'S HEALTH's owner and chief operating officer, Jason Blackwood made sexual advances  
24 and overtures to Plaintiff KATHRYN ACOSTA. To her understanding, Jason Blackwood  
25 suggested that he would promote her if she were to succumb to same. This promotion included  
26 her possible promotion to Clinical Director of Nevada and would allow her, he stated, to earn in  
27 excess of \$150,000 per year.

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1           15. During that dinner, Defendant AGELESS MEN'S HEALTH's founder, owner  
2 and chief operating officer Jason Blackwood also told Plaintiff KATHRYN ACOSTA he had a  
3 crush on her and he wanted to pursue a relationship with her. Ms. Acosta refused Mr.  
4 Blackwood's advance and informed him that she was in a relationship.

5           16. Plaintiff KATHRYN ACOSTA did not welcome nor had she ever indicated that  
6 she would welcome the personal or sexual advances of Jason Blackwood. Plaintiff was surprised  
7 and taken aback by his overtures, hoping that she was misinterpreting his actions and words.

8           17. The next day, Plaintiff KATHRYN ACOSTA reported the incident to her direct  
9 supervisor, Ursula Moser. Ms. Acosta believes that Ms. Moser told Dr. Johnny Mitias, another  
10 owner of Defendant AGELESS MEN'S HEALTH about the incident. Upon information and  
11 belief, Dr. Mitias is a long-time personal friend and business associate of Jason Blackwood in  
12 Tennessee, the principal place of operation or corporate headquarters for Defendant AGELESS  
13 MEN'S HEALTH.

14           18. Shortly after Plaintiff KATHRYN ACOSTA reported the incident to Ms.  
15 Moser, Jason Blackwood called Ms. Acosta and told her that she better be careful about the  
16 impressions she was giving at work.

17           19. Jason Blackwood gave the position of Clinical Director of Nevada to another.  
18 Ms. Acosta believes that person has earned in excess of \$150,000 per year, as the bonus is based  
19 on patient census.

20           20. In September 2009, during and then after another business dinner with  
21 colleagues, Jason Blackwood made similar, unwelcome advances to Plaintiff KATHRYN  
22 ACOSTA. Thereafter, Plaintiff KATHRYN ACOSTA began to notice more instances where she  
23 believed that the female employees were being treated unprofessionally by the male officials of  
24 the company, mostly by Jason Blackwood but tolerated or ratified by others. For example,  
25 among other inappropriate actions, Mr. Blackwood asked Ms. Acosta to assist in getting a group  
26 of his female employees to "party" with him while he was visiting Las Vegas.

27           21. In February 2010, while Plaintiff KATHRYN ACOSTA was assisting in

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1 opening a new clinic in California, Jason Blackwood was staying in the same hotel and he asked  
2 her if she wanted company that night. Again, Ms. Acosta refused Jason Blackwood's advances,  
3 and thereafter he started giving her the cold shoulder.

4 22. Plaintiff KATHRYN ACOSTA believes Jason Blackwood controlled, made or  
5 had approval authority over all major personnel decisions in the company, including hiring,  
6 firing, discipline, job creation and assignments, pay, bonus and commission structure, etc.

7 23. Plaintiff KATHRYN ACOSTA believes that female employees, prospective or  
8 current, who go along with, succumb to or encourage the sexual advances and/or dating  
9 overtures by Jason Blackwood are treated more favorably than those who do not. During  
10 Plaintiff KATHRYN ACOSTA's employment, she became aware that there appeared to be  
11 hirings or re-hirings, or promotions of females who were known to be or reputed to be Jason  
12 Blackwood's girlfriends and that this was well-known in the company.

13 24. After Plaintiff KATHRYN ACOSTA declined the advances and the overtures  
14 by Jason Blackwood and made it clear that she was not going to date or party with him, and that  
15 she intended to maintain professional distance and relationship with Jason Blackwood, she was  
16 not given the promotion promised nor afforded promotional or advancement opportunities  
17 thereafter and was treated more poorly. Plaintiff KATHRYN ACOSTA declined to participate in  
18 what she considered to be unprofessional outings and events.

19 25. Plaintiff KATHRYN ACOSTA was thereafter subjected to increasing hostility,  
20 harassment, and scrutiny at work. For example, in or around November, 2010, after Plaintiff  
21 KATHRYN ACOSTA believes she had rebuffed Jason Blackwood's advances on three separate  
22 occasions and reported her concerns about his behavior to Ms. Moser. Some of Ms. Acosta's job  
23 responsibilities were taken away from her. Although Ms. Acosta received a good review in  
24 December of 2010, she was marked down and criticized in revenue collection even though her  
25 revenue collection had increased. Ms. Acosta believes that at least some of these criticisms were  
26 unfair.

27 26. Plaintiff KATHRYN ACOSTA complained to Mike Arrison (Director, Human

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Resources) in December, 2010 and told him about the prior incidents with Jason Blackwood and the favoritism and advantages she believed were being accorded female employees who favor or party with Jason Blackwood and Steve Garrett. Plaintiff KATHRYN ACOSTA believes Jason Blackwood was told of her complaints. Mr. Arrison came to Las Vegas and interviewed her in person, and Plaintiff KATHRYN ACOSTA fully cooperated and told him of the problems she was experiencing.

27. On January 4, 2011, Plaintiff KATHRYN ACOSTA was informed that if she did not collect what she considered an unrealistic amount of revenue for January of 2011, her employment would be terminated.

28. After Defendant/employer AGELESS MEN'S HEALTH was notified by the EEOC that KATHRYN ACOSTA had filed charges (clearly protected activity), she became the object of retaliatory harassment which continued through the year 2012.

29. Plaintiff KATHRYN ACOSTA believes Jason Blackwood was causing others in the workplace to take actions against her in order to disguise or cover up his own wrongdoing, and that she was being set up to be fired or forced to resign. Mr. Arrison suggested that her resignation would be welcomed.

30. Examples of this escalating hostility and retaliatory harassment was that Ms. Acosta and her work were subject to closer scrutiny than other similarly situated co-workers after her internal and external complaints. Ms. Acosta was subjected to additional monitoring and work such as providing excel spreadsheets and/or notes for her accounts, which similarly situated co-workers did not have to do. Other examples included the removal of some of her job responsibilities being taken away.

31. These actions, conduct and hostility made it increasingly more difficult to perform her job. The hostility Ms. Acosta faced at Defendant AGELESS MEN'S HEALTH escalated to such a degree that eventually working conditions became intolerable to her.

32. Because she believed the situation was worsening, changes would not be made, and that Jason Blackwood and others controlled by or answering to him were retaliating against

1 her, and would continue to do so, on or around April 24, 2012, Plaintiff KATHRYN ACOSTA  
2 resigned her position.

3 33. Thus, Plaintiff KATHRYN ACOSTA was constructively discharged by  
4 Defendant AGELESS MEN'S HEALTH on April 24, 2012.

5 **FIRST CAUSE OF ACTION**

6 **Discrimination Based on Gender in Violation of Federal and State Statutes**

7 34. Plaintiff KATHRYN ACOSTA repleads and realleges every allegation  
8 contained in paragraphs 1 through 33 with the same force and effect as if set forth herein.

9 35. Plaintiff KATHRYN ACOSTA, a female, is a member of the class of persons  
10 protected by federal and state statutes prohibiting discrimination based on gender.

11 36. The Defendant AGELESS MEN'S HEALTH, as an employer, is subject to the  
12 federal statute prohibiting sex discrimination, Title VII, 42 U.S.C. § 2000e *et seq.* as amended,  
13 and the Nevada statute prohibiting sex discrimination, N.R.S. 613.310 *et seq.*, and thus has a  
14 legal obligation to provide Plaintiff KATHRYN ACOSTA and all employees a Nevada  
15 workplace free of unlawful discrimination. It failed to do so.

16 37. Plaintiff KATHRYN ACOSTA was treated differently because of her gender,  
17 female. Examples of this disparate and differing treatment, as more fully detailed above, include  
18 but are not limited to, subjecting her to unwanted sexual advances and disadvantaging her when  
19 she rejected the advances. This differential treatment altered the terms and conditions of her  
20 employment, and proximately caused Plaintiff KATHRYN ACOSTA injury and damage.

21 38. Plaintiff KATHRYN ACOSTA believes that she and other female employees  
22 were receiving less pay or unequal pay for comparable or more complex and sophisticated work,  
23 and that Defendant AGELESS MEN'S HEALTH was rewarding and improperly and  
24 discriminatorily advantaging male employees. Plaintiff KATHRYN ACOSTA also believes that  
25 Defendant AGELESS MEN'S HEALTH may also pay female employees more and accord them  
26 more benefits and advantages if they accede to or participate in personal relationships with Jason  
27



1 Blackwood and other male officials. This constitutes illegal sex discrimination prohibited by the  
2 aforementioned statutes.

3 39. The aforementioned actions also gave rise to an illegal hostile environment  
4 based on the gender of Plaintiff KATHRYN ACOSTA. That hostile environment arose out of  
5 the cumulative effect of events in 2009, 2010, 2011, and 2012, which created an illegally hostile  
6 environment within the limitation period under Title VII and the Nevada Statute in 2010, for  
7 which she filed sworn intake forms with the EEOC in January, 2011.

8 40. As more detailed above, this included, but is not limited to, promoting a male  
9 employee, Steve Garrett, to Clinic Director of Nevada, and that she may have been paid less and  
10 treated more poorly than male employees or those female employees who complied or tolerated  
11 sexual advances, that she was subjected to closer scrutiny, additional monitoring of her work,  
12 and removal of some job responsibilities from her which were given to subordinate employees.  
13 The effect of these actions and conduct was humiliating, disturbing and distressing to Plaintiff  
14 KATHRYN ACOSTA.

15 41. This illegally hostile environment made it more difficult to do her job, affected  
16 her job performance, her work-place well-being and her mental state.

17 42. Wanting to keep her job and income, and be in the medical field, Plaintiff  
18 KATHRYN ACOSTA suffered under these conditions as long as she could until her resignation,  
19 which should be considered, therefore, a constructive discharge.

20 43. Defendant AGELESS MEN'S HEALTH'S aforementioned actions created  
21 working conditions so intolerable that a reasonable person in Ms. Acosta's place would have  
22 resigned. Plaintiff KATHRYN ACOSTA did resign due to the increasingly hostile and  
23 discriminatory treatment she suffered and the likelihood that the situation would not improve.

24 44. Defendant AGELESS MEN'S HEALTH had actual or constructive knowledge  
25 of the intolerable conditions and discrimination to which Plaintiff KATHRYN ACOSTA was  
26 being subjected. DEFENDANTS knew of the continuing harmful impact on KATHRYN  
27 ACOSTA because DFENDANTS created those conditions, and chose not to remedy the situation

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1 even after she mentioned it in her resignation letter.

2 45. These actions constitute violations of federal law prohibiting sex  
3 discrimination, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq*  
4 and under state law, N.R.S. 613.310 *et seq.*,

5 46. As an employer subject to Title VII, Defendant AGELESS MEN'S HEALTH  
6 is liable for damage and injuries Plaintiff KATHRYN ACOSTA suffered while in their employ  
7 for illegal discrimination, sexual harassment, including disparities in pay and a hostile  
8 environment based on her gender.

9 47. Plaintiff KATHRYN ACOSTA has suffered economic losses as a result of this  
10 illegal sex discrimination and she is entitled to recover an amount sufficient to make her whole.

11 48. Plaintiff KATHRYN ACOSTA also suffered emotional distress, humiliation,  
12 and mental anguish and under the aforementioned federal statute, she is entitled to be  
13 compensated therefor.

14 49. Plaintiff KATHRYN ACOSTA is also entitled to punitive damages under  
15 federal law in an amount sufficient to punish Defendant AGELESS MEN'S HEALTH and to  
16 deter it and others from engaging in these actions.

17 50. As a direct and proximate result of Defendant AGELESS MEN'S HEALTH'S  
18 discriminatory conduct, Plaintiff KATHRYN ACOSTA has had to secure the services of an  
19 attorney, and under the aforementioned federal statute she is entitled to recover her reasonable  
20 attorneys' fees and costs.

21  
22 **SECOND CAUSE OF ACTION**  
**Retaliation**

23 51. Plaintiff KATHRYN ACOSTA repleads and realleges every allegation  
24 contained in paragraphs 1 through 50 as if fully set forth herein.

25 52. The aforementioned state and federal statutes prohibiting discrimination  
26 separately also prohibit employers from retaliating against any individual engaging in protected  
27

1 conduct, which includes reporting, complaining about or raising concerns about possible  
2 discrimination or acts which might constitute discrimination.

3 53. Defendant AGELESS MEN'S HEALTH subjected Plaintiff KATHRYN  
4 ACOSTA to retaliation after and as a result of her engaging in protected activity over many  
5 months which are more fully detailed above. Plaintiff KATHRYN ACOSTA engaged many  
6 protected activities including reporting and complaining to her direct supervisor in July, 2009  
7 about Jason Blackwood's unwelcome sexual advances by Jason Blackwood, declining to  
8 participate in partying and other unprofessional activities with owners and managers, protesting  
9 performance issues and standards in 2010, and filing formal charges of discrimination with the  
10 EEOC in January, 2011.

11 54. The Defendant/employer AGELESS MEN'S HEALTH was notified that  
12 KATHRYN ACOSTA had filed charge with the EEOC and otherwise engaged in protected  
13 conduct, she became the object of increasing numbers of incidents, actions and conduct whose  
14 cumulative effect was illegal retaliatory harassment which continued into the year 2012.

15 55. Plaintiff KATHRYN ACOSTA believes this retaliatory harassment was  
16 orchestrated, instigated or may have been accomplished to please or curry favor with Jason  
17 Blackwood, the founder and owner of AGELESS MEN'S HEALTH. It began in 2009, and  
18 continued in the years 2010, 2011 and then into and throughout April, 2012. Plaintiff  
19 KATHRYN ACOSTA is not asserting that each and every incident, viewed separately,  
20 constitutes illegal retaliation but rather that the cumulative effect is illegal retaliation.

21 56. From 2009 until her resignation on April 24, 2012, Plaintiff KATHRYN  
22 ACOSTA was subjected to continual and increasingly hostile actions which made it difficult for  
23 her to do her work and succeed and thrive in her Ageless Men's Health job. Those actions and  
24 that conduct by AGELESS MEN'S HEALTH officials would deter herself and others from  
25 reporting or complaining or otherwise engaging in protected conduct, thus constituting illegal  
26 retaliation because Title VII has been held to prohibit employer actions which "well might have  
27 dissuaded a reasonable worker from making or supporting a charge of discrimination."

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1 *Burlington Northern Co. v. White*, 548 U.S. 53 (2006).

2 57. Defendant AGELESS MEN'S HEALTH failed to take reasonable actions to  
3 prevent retaliation against KATHRYN ACOSTA. To Ms. Acosta's knowledge and perception,  
4 after she complained and otherwise engaged in protected activities, no preventative or remedial  
5 actions were taken to prevent retaliation.

6 58. To Plaintiff KATHRYN ACOSTA perception, her working conditions  
7 deteriorated and became so intolerable that a reasonable person in Ms. Acosta's place would  
8 have felt compelled to resign, and thus her resignation should be considered a constructive  
9 discharge.

10 59. The aforementioned actions and conduct of Defendant AGELESS MEN'S  
11 HEALTH constitutes illegal retaliation prohibited by state and federal statutes.

12 60. As a direct and proximate result of Defendant AGELESS MEN'S HEALTH'S  
13 wrongful conduct and illegal discrimination in the form of retaliation, Plaintiff KATHRYN  
14 ACOSTA has been seriously harmed, economically and emotionally, and she is entitled to be  
15 fully compensated therefor.

16 61. Plaintiff KATHRYN ACOSTA has had to secure the services of an attorney to  
17 pursue this action, and under the aforementioned federal statute, she is entitled to recover her  
18 reasonable attorneys' fees and costs.

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1 **WHEREFORE, Plaintiff KATHRYN ACOSTA respectfully prays as follows:**

- 2 A. For a trial by jury on all issues;
- 3 B. For all damages allowable under state and federal statutes prohibiting
- 4 discrimination and retaliation;
- 5 C. For punitive damages in an amount sufficient to punish and deter
- 6 Defendants from engaging in any such conduct in the future and as an
- 7 example to other employers and elected officials not to engage in such
- 8 conduct;
- 9 D. For the costs of this action together with reasonable attorneys fees and
- 10 costs, as allowed by § 706(k) of Title VII, 42 U.S.C. § 2000e-6(k);
- 11 E. For prejudgment interest as allowable by law;
- 12 F. For an additional amount to account for any taxes Plaintiff may be called
- 13 upon to pay in relation to any awards made herein;
- 14 G. For such other and further relief as the Court shall deem just and proper.

15 **DEMAND FOR JURY TRIAL**

16 Plaintiff herein demands a trial by jury on all issues so triable.

17 Respectfully submitted this 5<sup>th</sup> day of April, 2013.

18 By: 

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